

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

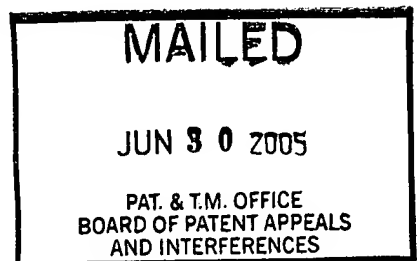
UNITED STATES PATENT AND TRADEMARK OFFICE

**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Ex parte JERRY THOMAS MOORE

Appeal No. 2005-0271
Application No. 09/636,731

HEARD: June 8, 2005



Before FRANKFORT, MCQUADE, and BAHR, Administrative Patent Judges.
FRANKFORT, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's non-final rejection, in the paper mailed September 10, 2003, of claims 1 through 18, 23 through 25, 40 and 41. Claims 19 through 21, the only other claims pending in the application, have been withdrawn from further consideration. Claims 22 and 26 through 39 have been cancelled. Subsequent to the above-noted Office action the examiner has determined that claims 7 through 18 contain allowable subject matter, but also notes that they are dependent

on a rejected base claim, thus, claims 7 through 18 have now been objected to and indicated to be allowable if rewritten in independent form. In light of that determination, only claims 1 through 6, 23 through 25, 40 and 41 remain on appeal.

As noted on page 1 of appellant's specification, the present invention relates to a system for carrying fishing equipment, and more particularly to a system for carrying a pocket-sized fly box at chest height and for holding a fishing rod. See, for example, Figures 1 through 4, 8 and 9 of the application drawings wherein Figure 1 shows a chest fly box system (100) in accordance with appellant's invention in use by a fisherman standing in a stream, Figure 2 shows the base piece (202) and fishing rod holder (204), while Figure 3 shows a harness (300) adapted to receive the base piece and to support the pocket-sized fly box (400) of Figure 4 in the manner generally depicted in Figures 8 and 9. Independent claims 1 and 25 are representative of the subject matter on appeal, and a copy of those claims can be found in Appendix A1 of appellant's brief.

The prior art references of record relied upon by the examiner as evidence of obviousness under 35 U.S.C. § 103 are:

Wimler	1,549,400	Aug. 11, 1925
Gillespie	4,831,772	May 23, 1989

Hutton et al. (Hutton)	5,505,354	Apr. 9, 1996
Volmer	5,950,352	Sep. 14, 1999

Claims 1, 2, 4 and 40 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Wimler in view of Gillespie.

Claims 3, 5, 6, 23 through 25 and 41 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Wimler in view of Gillespie and Hutton.

Claims 1 and 2 additionally stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Volmer.¹

Rather than reiterate the examiner's statement of the above-noted rejections and the conflicting viewpoints advanced by appellant and the examiner regarding those rejections, we refer to the non-final rejection (mailed September 10, 2003) and the examiner's answer (mailed May 21, 2004) for the reasoning in support of the rejections

¹Although not expressly indicated, it appears that the rejection of claims 1 through 18, 23 and 24 under 35 U.S.C. § 112, first paragraph, made by the examiner in the non-final rejection mailed September 10, 2003 and that of claims 1 through 18, 23 through 25, 40 and 41 under 35 U.S.C. § 112, second paragraph, have now been withdrawn and thus are not before us on appeal, since those rejections have not been repeated in the examiner's answer. See Ex parte Emm, 118 USPQ 180 (PTO Bd App 1957).

and to the brief (filed February 17, 2004) and reply brief (filed July 21, 2004) for appellant's arguments to the contrary.

OPINION

Our evaluation of the obviousness issues raised in this appeal has included a careful assessment of appellant's specification and claims, the applied prior art references, and the respective positions advanced by appellant and the examiner. As a consequence of our review, we have made the determination that the evidence relied upon by the examiner is not sufficient to support a conclusion of obviousness under 35 U.S.C. § 103 with respect to appellant's claims 1 through 6, 23 through 25, 40 and 41 on appeal. Our reasoning for such determination follows.

We look first to the examiner's prior art rejection of claims 1, 2, 4 and 40 under 35 U.S.C. § 103(a) based on Wimler in view of Gillespie. In that regard, the examiner contends that Wimler shows a chest fly box system having a base piece (6) for supporting a cabinet or fly box (9), a harness (7) that secures the base piece to the chest of a fisherman, with the base piece resting on the front of the chest, and a hinge (col. 1, lines 43-47) for permitting movement of the fly box (9) from a horizontal (Fig. 2) to a vertical position (Fig. 1). The examiner also characterizes the above-noted (but un-shown) hinge as a fastener to secure the fly box to the base piece and urges (non-

final rejection, page 4) that such hinge/fastener “can inherently releasably secure a fly box so that it can be accessed without removing it from the base piece.” The examiner thus contends that Wimler shows all of the elements recited with the exception of a fastener adapted so that a fly box can be removed from the base piece without using a tool.

To account for this difference in the system of Wimler the examiner turns to Gillespie, urging that it shows a fly box (56) adapted to be removed from a base piece (36) without the use of tools (Fig. 1), since the fly box and the base have complementary hook and loop fasteners (84, 86). Based on this teaching, the examiner concludes that it would have been obvious to one of ordinary skill in the art at the time of appellant’s invention “to provide Wimler with hook and loop fasteners as shown by Gillespie so that the fly box [9] could be removed without using a tool for the purpose of convenience under fishing conditions” (non-final rejection, page 4).

Like appellant, we see no basis in the collective teachings to be fairly derived from Wimler and Gillespie which would have provided any motivation or suggestion for one of ordinary skill in the art at the time of appellant’s invention to provide the fisherman’s cabinet/fly box arrangement of Wimler with hook and loop fasteners “as shown by Gillespie.” Nor has the examiner explained how any such combination would

be made or why it would necessarily have resulted in the particular chest fly box system set forth in appellant's claims 1, 2, 4 and 40 on appeal. In our view, the examiner's proposed cryptic modification of the fisherman's cabinet/fly box arrangement of Wimler based on the teachings pointed to in Gillespie represents a clear case of impermissible hindsight reconstruction of the claimed invention based on appellant's own teachings. In that regard, we note, as our court of review indicated in In re Fritch, 972 F.2d 1260, 1266, 23 USPQ2d 1780, 1784 (Fed. Cir. 1992), that it is impermissible to use the claimed invention as an instruction manual or "template" in attempting to piece together isolated disclosures and teachings of the prior art so that the claimed invention is rendered obvious.

Since we have determined that the teachings and suggestions found in Wimler and Gillespie would not have made the subject matter as a whole of independent claim 1 on appeal obvious to one of ordinary skill in the art at the time of appellant's invention, we must refuse to sustain the examiner's rejection of that claim under 35 U.S.C. § 103. It follows that the examiner's rejection of dependent claims 2, 4 and 40 under 35 U.S.C. § 103(a) based on the teachings of Wimler and Gillespie will likewise not be sustained.

As for the examiner's rejection of claims 3, 5, 6, 23 through 25 and 41 under 35 U.S.C. § 103(a) as being unpatentable over Wimler in view of Gillespie and Hutton, the examiner's position is that it would have been obvious to provide Wimler as modified by Gillespie with a fishing rod holder as shown by Hutton at (142) for the purpose of maintaining the rod while changing tackle or re-rigging a broken line. With particular regard to independent claim 25, the examiner further urges that "it would have been obvious to integrally form the fly box support and the fishing rod holder" (non-final rejection, page 5).

Concerning dependent claims 3, 5, 6, 23 and 24, we note that even if the fisherman's cabinet/fly box of Wimler were to somehow be provided with a fishing rod holder like that seen at (142) in Hutton, such a modification would not provide for or otherwise overcome the deficiencies we have indicated above in the examiner's basic combination of Wimler and Gillespie. For that reason alone, we are justified in not sustaining the examiner's rejection of dependent claims 3, 5, 6, 23 and 24 under 35 U.S.C. § 103. Moreover, we observe that we are in agreement with appellant's arguments in the brief (pages 12-15) and reply brief concerning claims 3, 5, 6, 23 and 24.

Independent claim 25 defines a portable system for holding, storing and transporting fishing equipment, wherein that system comprises, *inter alia*, “an integrated fly box support and a fishing rod holder made of a single piece of rigid material, and including a base piece.” Claim 25 also requires that the fishing rod holder be “configured to hold a fishing rod in a horizontal orientation while said inside of said fly box is being accessed.” As urged by appellant in the brief (page 16) no such structure is taught or suggested in the applied patents to Wimler, Gillespie and Hutton. More particularly, like appellant, we note that the only fishing rod holder in the applied patents is seen in Hutton and is clearly not integrated with a fly box support or formed together with the fly box support from a single piece of rigid material, as required in claim 25 on appeal. Nor has the examiner adequately dealt with these differences by providing an explanation of how and why the rod holder (142) as seen in Hutton would have been 1) integrated with the fly box support (6) of Wimler, 2) configured to hold a fishing rod in a horizontal orientation while said inside of said fly box is being accessed, and 3) formed together with the fly box support (6) from a single piece of rigid material. For these reasons, we will not sustain the examiner’s rejection of claim 25, or that of dependent claim 41, under 35 U.S.C. § 103(a).

As for the additional rejection of claims 1 and 2 under 35 U.S.C. § 103(a), in the non-final rejection (page 6) the examiner points us to Figure 9 of Volmer, urging that it

shows a base piece, a harness, a hinge (112) and a fastener (92). In the statement bridging pages 4 and 5 of the answer, the examiner further urges that Volmer shows hook and loop material (92) for attaching plates (84) as shown in Figure 29. Assuming that a fly tray (84) as seen in Figure 29 were to be added to the wallet (86) seen in Figure 9 of Volmer and releasably held in place via the hook and loop strips (92) as the examiner indicates, we note that the examiner has made no effort to demonstrate how appellant's claims 1 and 2 would read on such a structure. More particularly, the examiner has not explained where in Volmer there is disclosed or taught a chest fly box system including "a hinge for permitting movement of said fly box from a horizontal to a vertical position," as set forth in claim 1 on appeal. Clearly the hinge (112) pointed to by the examiner in Volmer Figure 9 does not provide any such operation. Thus, the examiner has failed to make out a *prima facie* case, and for that reason we will not sustain this rejection.

REVERSED

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